



Fairness and Equality for Women in the Justice System

Response to the Report of the Law Society of B.C. Gender Bias Committee

Summary

The Honourable Colin Gabelmann
Attorney General

The Honourable Penny Priddy
Minister of Women's Equality



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Preface

Our justice system does not treat women fairly or as equals. A 1992 report by the Law Society of British Columbia, *Gender Equality in the Justice System*, described the system's bias against women and recommended detailed changes.

The Government of British Columbia promised to respond to the report by September 1993. This document summarizes that response. It is also a reporting to the people of British Columbia on what has been done to improve how women are treated by the justice system; what initiatives are underway; and what is being planned for the future.

Introduction

In September 1992, the Law Society of British Columbia released the results of a major study of the way women are treated in the justice system. Eighteen months of consultation and research were directed by a committee chaired by Mr. E.N. (Ted) Hughes, Q.C. The committee comprised five other experienced and respected members of the British Columbia Bar.

Their work culminated in a two-volume report entitled *Gender Equality in the Justice System: A Report of the Law Society of British Columbia Gender Bias Committee*. The report covered family, criminal and civil law; the response of the justice system to violence against women; gender bias from the courtroom perspective; and gender bias in the legal profession.

The committee concluded that:

“...gender inequality is pervasive in the legal and justice systems in this province. While we are also satisfied there are examples of bias against men, the vast majority of concerns raised reflect discrimination against women. Furthermore, while the laws, for the most part, are gender neutral, the application of many of these laws creates a situation of systemic bias against women...”

After carefully considering the Law Society report and its 308 specific recommendations, the Government of British Columbia agrees with this assessment and is taking steps to change the situation described in the report.

The Government of British Columbia is firmly committed to fairness and equality for women, throughout the justice system and in society at large. The establishment and significant financial support of the only Ministry of Women's Equality in Canada is a visible demonstration of that commitment.

The government has taken a number of positive steps in the area of equal opportunity employment policies. Regarding the justice system specifically, the B.C. Ministry of Attorney General has responded to complex issues with forward-looking policies in the areas of violence against women and children and support to the victims of crime.

Nonetheless, as identified by the Law Society report, by other recent enquiries into fairness and equality for women in the justice system, as well as by the government's own analyses, much more remains to be done. In particular, the special situations of aboriginal women, women of different cultural backgrounds, rural women and women with disabilities must be addressed.

British Columbia is a caring and compassionate society. It is also practical and progressive. It recognizes the need to call on the strengths, experience and diversity of its full population to meet the challenges of the 21st century.

The justice system must assume a special responsibility in this regard. As the ultimate arbiter of balance, objectivity and fairness in society, its legitimacy is based upon the example it sets. We applaud the initiative of the Law Society of British Columbia in recognizing and addressing this responsibility. As a leading player in the justice system, the Ministry of Attorney General is anxious to ensure that those areas within its jurisdiction operate fairly. The Ministry of Attorney General intends to work with its justice system partners to ensure other elements of the system do so as well.

Summary of Response

The Government of British Columbia considers the Law Society report to be thorough and constructive. The government is implementing many of the report's recommendations—either in whole or in part—and considering others. In some areas, the government may agree with the recommended approach of the report but, for administrative or financial reasons, be unable to implement the recommendations fully at this time. The few instances of disagreement with the report's recommendations tend to be disagreement not on principle but on approach.

This document focuses on current government policies and activities. It explains initiatives proposed to ensure that concerns are addressed quickly, cost-effectively, and through consultation.

Note that the issues discussed in this response represent only one part of the government's comprehensive approach to issues of fairness to women as led by the Ministry of Women's Equality.

The government recognizes the need for action in the following areas:

(1) An Integrated Government Approach

Justice initiatives must be consistent. They must be coordinated and supported by all of government.

This is because justice issues reflect our broader society and culture. Women who work in or must deal with the justice system recognize all too well that the same stereotypes and gender-based assumptions operate in the system as elsewhere. Fairness and equality for women will not be achieved in the justice system until they are an integral and natural part of society as a whole.

The Ministry of Attorney General has made fairness and equality for women in the justice system a priority. The Ministry of Women's Equality, as the central advocate for women's issues within government, will ensure that initiatives to bring about fairness and equality for women in the justice system are linked to a broader policy framework.

(2) Fairness and Equality for Women a Priority

The Ministry of Attorney General has instructed its staff that achieving fairness and equality for women is a ministry priority.

Managers have been asked to integrate the principle of fairness and equality for women into their work and to pursue the Law Society report's recom-

mentations. Branch heads have been made accountable to the Deputy Minister for fairness and equality goals.

A gender equality special advisor position has been established to encourage and coordinate the ministry's efforts. It will be based in the Corporate Planning Branch and report directly to the Deputy Minister. The special advisor will work with Branch heads on a ministry-wide fairness and equality strategy, and will monitor and evaluate the ministry's actions.

(3) Training and Education

The Ministry of Attorney General will establish a training strategy in response to the Law Society report's training recommendations.

Many of the report's recommendations deal with the need for appropriate and coordinated training of justice system officials. Women have long expressed concern that some police, Crown counsel and other justice system personnel do not appear to understand the problems facing women or how to apply the law effectively to deal with women's issues.

In particular, the problem of violence against women is so deeply imbedded in social history that no single part of the justice system could hope to succeed on its own in changing the system's response. An integrated and coordinated effort is an essential ingredient of success. Changing attitudes may be the single most critical factor in improving the justice system's response to crimes of violence against women.

The gender equality special advisor will be involved in developing the training strategy and will coordinate other training across the justice system. Resources will be allocated more efficiently through this coordinated approach.

(4) Accountability to a Broader Community of Interests

The government will involve the wider community in its activities and inform the public of its efforts to effect change by distributing its response to the Law Society report.

The issue of fairness and equality for women in the justice system affects a far wider community than simply justice system professionals. Women looking to the justice system and community agencies for protection and assistance have a direct and critical interest in how government addresses this issue.

The Deputy Minister of the Ministry of Attorney General, supported by the Ministry of Women's Equality, will establish a core advisory committee to assist in the implementation of the Law Society's recommendations. This committee will be an important resource for the gender equality special advisor.

Community groups will be represented on the committee. As particular issues are addressed, the committee will be augmented by justice system professionals and representatives and clients of the various services offered by the justice system. The Law Society will be invited to play a significant role.

Response to Specific Sections of the Report

(I) The Legal Profession

The report notes “...a growing dissatisfaction among a large number of women practising law in this province that stems from the pervasive existence of gender bias in the legal profession.” It points to issues of sexual harassment; a failure or refusal by the profession to accommodate family responsibilities adequately; discrimination in hiring and promotion; and gender-driven restrictions on work opportunities and assignments. Additional discrimination faces lesbian women, women of colour, aboriginal women or women lawyers with disabilities.

The Government of British Columbia as an employer is making a difference for women with:

- a pay equity program throughout the public service
- a government-wide employment equity program
- a commitment to full participation of women throughout the public service and in government appointments
- a policy against sexual harassment, and information and training to ensure managers and staff are familiar with their rights and obligations
- endorsement of progressive approaches to flexible work and parental leave arrangements
- a policy on gender inclusive language

As the largest legal employer in the province, the Ministry of Attorney General is very sensitive to its responsibility for leadership in the legal profession throughout British Columbia. Nonetheless, the Law Society report indicates the ministry is not generally considered to be a supportive work environment for women. The ministry is taking steps to change that.

- Initiatives leading to fairness and equality for women have been identified by the Deputy Minister as a priority.
- A gender equality special advisor, reporting to the Deputy Minister, will work with branch heads to develop a comprehensive strategy to achieve fairness and equality for women in the ministry. The special advisor will monitor and evaluate the ministry’s ongoing response to the recommendations of the Law Society’s report. The special advisor will identify and encourage whatever additional initiatives may be required.

- The ministry is developing a coordinated training strategy to respond to the report's training recommendations.
- Efforts are under way to address the current under-representation of women at senior levels in the ministry.
- Since 1987, Corrections Branch has had in place an employment equity program to increase the number of women in all under-represented union and management positions. The Branch has been proactive in recruitment, retention, training, education, and developmental and bridging positions.
- Corrections Branch has participated in a joint BCGEU/management review of employment equity and sexual harassment issues. A joint plan and implementation strategy will be signed off soon.
- Corrections Branch has delivered several regionally-based and province-wide training and education programs on women and men working together effectively.

(2) The Treatment of Women in the Courts

The report found that many women lawyers, witnesses and litigants are dissatisfied with how they are treated in the courtroom. They lack confidence in the system's ability to administer fair and impartial justice.

Prosecutions are undermined by lack of sensitivity or appreciation for the dynamics of abusive relationships and the harm caused by sexual abuse, as well as by the perpetuation of stereotypical notions about women. The physical structure of courtrooms and the availability of credible interpretation services for non-English speaking women were also identified as areas of concern.

The government has already begun to make sure women are treated fairly and equally by the courts:

- The government's discretionary appointments to the provincial Judicial Council reflect gender balance. Currently, four of the nine members of the council are women.
- The Ministry of Attorney General is training justice system and victim agency personnel in the new policy on Violence against Women in Relationships.
- Judicial education is developed and delivered independently of government, although Ministry of Attorney General staff assist upon request. Ministry funds have been made available for training of Justices of the Peace in the new policy on Violence against Women in Relationships.

- New courthouse facilities will be designed with waiting rooms separating victims from accused persons as well as with robing rooms for female lawyers. Change rooms and waiting rooms have been added to existing facilities in higher-demand locations where possible.
- The Court Services Branch of the Ministry of Attorney General provides court interpreters in the courtroom to parties and witnesses in all criminal and Provincial Court family and youth matters or upon court order. To improve the quality of interpretation in the courts, a policy introduced in June 1992 establishes an accreditation process and provides for preferential hiring of accredited interpreters and a two-tier fee schedule.

(3) Family Law

The report identifies a lack of equal access to justice for women, based on financial barriers. It concludes that the social and economic consequence of marriage breakdown is the feminization of poverty and asserts that the family law system should not perpetuate poverty as the normal result for women of marriage breakdown.

The report argues that legislative change, increased education for justice system professionals on the cycle of poverty experienced by women, and special measures are required to rectify this situation.

The government agrees that equalizing access to the justice system means addressing the issue of poverty. This is one of the most serious challenges facing our society. The government has already begun to take steps in line with the recommendations of the report:

- The basic earnings exemption for single parents receiving income assistance was increased from \$100 to \$200 effective May 1, 1992, reflecting the government's commitment to support and encourage single parents who are striving to become self-sufficient through employment.
- The GAIN Act Regulations were amended in December 1991 to remove the expectation that single parents seek employment. The Ministry of Social Services provides work and training incentives for single parents to foster their economic well-being over the longer term, rather than expecting them to take low-paying jobs once their youngest child is six months old.
- The Ministry of Social Services is participating in the federal Self-Sufficiency Project to study the effectiveness of income supplements for single parents receiving income assistance. The project will provide an earnings supplement generous enough to permit single parents to remain fully employed and independent of income assistance for up to three years.

- Regular income assistance rates have been increased twice in the past 18 months to benefit all recipients, including those who are unable to take advantage of the earnings exemption.
- Community agencies are funded to provide public legal education on family law issues in a variety of languages.

Family law is critically important to this government. If the cycle of women's poverty is to be broken, new and innovative ways must be found to deal more effectively with issues such as spousal maintenance, the division of matrimonial property, child support, and custody and access.

Family Justice Reform Project

The Ministry of Attorney General has established a Family Justice Reform Project committee with representatives from the Ministry of Social Services and Ministry of Women's Equality.

The committee will review and assess recommendations from a number of previous reports addressing various aspects of the family justice system, and prepare a comprehensive set of options and recommendations leading to reform of family justice services.

The goal of the project is integration of the range of family justice services including enhanced mediation services, expanded hours of operation, educational programs and supervised access. These concepts will be tested in four pilot projects located in diverse communities throughout the province, including a large metropolitan area, a medium-sized city, a small town and an aboriginal community. Specialized services at each site will reflect the needs of the local community and will test the concept of "one-stop shopping" for users of the family justice system.

Legislative Amendments

The Ministry of Attorney General is already pursuing a number of the legislative amendment proposals of the Law Society report.

- An amendment will be proposed for the *Family Relations Act* to allow for division of pensions at source. This amendment will benefit women by reducing the need for litigation and eliminating the need for former spouses to maintain financial ties long after dissolution of the marriage.

The Ministry of Attorney General is involved in two other initiatives relating to legislative reform in this area: a review of the Law Reform Commission of B.C.'s Report on Property Rights on Marriage Breakdown, and a Federal/Provincial/Territorial Family Law Committee that will introduce Child Support Guidelines to ensure national consistency in child support payments.

The Law Society report makes a useful contribution to the consideration of these issues. The government supports the intent of the family law recommendations and will use the report to identify the most effective way to reach those ends.

Family Maintenance Enforcement

The Family Maintenance Enforcement Program is another area where the Law Society and the government share the same goal: ensuring that child support payments mandated by the Court are paid and that families have access to this money to support themselves and to enjoy a certain standard of living.

A number of initiatives in line with the report's recommendations have recently been put in place to improve the program. These include:

- a direct payment policy
- a direct deposit system
- advising creditors of all court hearings
- an Interactive Voice Response System (INFOLINE), now available free-of-charge throughout the province
- a creditor enforcement summary report.

A communications consultant has audited the program's communications policies and practices. The clarity and quality of the program's contacts with clients are being improved.

The government is encouraged by a recent independent program evaluation and a client satisfaction survey. The survey concluded the program is operating cost-effectively and efficiently. It is also meeting with relatively high degrees of customer satisfaction. Nonetheless, a review of the long-term relationship of the Family Maintenance Enforcement Program with government is under way.

(4) Civil Law

The report identifies the issue of equal access to justice as a major concern in the civil law area. It notes the persistence of gender bias in the calculation of damages. It recommends more funding of public legal education and the Legal Services Society, and more legal and judicial education.

Although most issues identified in this chapter of the Law Society report are directed to bodies other than the provincial government, the government endorses the report's general approach.

The government is working with community agencies to provide information in different languages on civil law issues. It will continue to do so as resources permit. The funding requirement of the Legal Services Society is reconsidered regularly.

(5) The Justice System's Response to Violence Against Women

The issue of violence against women—wife assault, sexual assault, or related assaults on children or other vulnerable groups—is one of the most critical issues with which our society and the justice system must deal. Only recently have we begun to realize the pervasive nature of this behaviour, to recognize its criminality, and to understand the importance of its elimination if we are to build a better future for women in the province.

The report emphasizes the need for a comprehensive and coordinated justice system response to issues such as wife assault and sexual assault and makes recommendations for prosecuting child sexual abuse.

The government is in complete agreement with the report's directions and has taken significant steps toward implementing the recommendations:

- A revised Ministry of Attorney General Policy on Violence against Women in Relationships, incorporating the Law Society's recommendations, was released in March 1993.
- A detailed implementation plan is being developed for this policy, with \$600,000 in funding from the Ministry of Women's Equality's Stopping the Violence Initiative. The implementation plan includes a public education program, training modules for all parts of the justice system, data bases to help prosecutions and assess volumes, and evaluations.
- British Columbia is a leader in Canada in per capita funding for community victim support services. The Ministry of Attorney General gives approximately \$6 million annually to more than 100 victim assistance programs in the province, in addition to Criminal Injuries Compensation funds and extensive support for public legal education programs.

These contributions have been significantly increased in the past year by the Stopping the Violence Initiative administered by the Ministry of Women's Equality. Under this initiative, \$10 million was allocated to assist communities throughout B.C. to provide services to women who are victims of violence, to address family violence in aboriginal communities and to develop a variety of prevention, education and training programs.

Eighty new counselling programs for women who have been victims of violence have been funded. Four new sexual assault centres, seven new woman assault centres dealing with partner assault as well as sexual assault, and new treatment programs for assaultive men have been established. A contribution was made to the RCMP Violent Crime Analysis Unit data base, an investigative tool to assist with the identification of predatory offenders.

Also, the Ministry of Social Services gives approximately \$21 million to the emergency shelters program that supports some 60 transition houses throughout the province.

- The Ministry of Women's Equality established the Interministry Committee on Violence Against Women to ensure greater coordination between ministries and agencies responding to violence against women and to coordinate new government initiatives.

This committee is developing an Interministry Strategic Plan on Sexual Assault and Adult Survivors of Childhood Sexual Abuse. The plan includes implementation priorities, based on relevant recommendations in the Law Society report as well as recommendations contained in the Report of the B.C. Task Force on Family Violence and The First Nations Report.

- Work is under way on policies to deal with known sexual abusers and sexual assault cases.
- The Ministry of Attorney General is examining the need for and possible content of victims legislation.

Of particular interest to the government was the Law Society report's recommendation for a special Family Violence Court. The government shares the Law Society's desire that these cases be handled with sensitivity and efficiency. The Ministry of Attorney General is working with the judiciary to accelerate cases through the courts in the short term. It has also asked an ad hoc working group to examine how to reach this goal, including the possibility of a Family Violence Court. The needs of outlying regions of the province must also be addressed. The group will report to the Ministry of Attorney General's Executive Committee.

These initiatives, supported by intensified and better coordinated training, will help to ensure a comprehensive and positive response to the issues raised in the Law Society Report.

(6) Woman as Offender

The report suggests that gender bias in the criminal justice system extends to a misunderstanding of the dynamics of female crime and to discrimination in the way female offenders are treated. It concludes that incarceration imposes a harsher penalty on women because of the lack of programs, services and appropriate facilities during incarceration and upon release. It proposes that the criminal justice system make a sharper distinction between social and criminal problems and that restraint be exercised in the use of the criminal law and incarceration of women.

Prostitution

The report recommends the decriminalization of prostitution and a shift toward social service efforts to address the problems of soliciting.

The government agrees that prostitution must be addressed in the context of the broader social environment in which it occurs and that new and creative solutions are required. There can be little doubt that efforts over the years to address the problems of soliciting and prostitution through the criminal justice system have realized limited success.

British Columbia chairs a national working group on prostitution. Its mandate is to review legislation, recommend changes and report to the federal Deputy Minister of Justice and provincial Deputy Attorneys General by November 1994. The recommendations of the Law Society report are being considered as a part of that review.

The government considers it beneficial to await the report of the national working group on prostitution before making a decision on how to proceed with legislative reform in this complex and contentious area.

Women in the Corrections System

The situation of women in the Corrections system poses difficulties for the government. It agrees with the intent of the Law Society report that female clients of the Corrections system should be provided with the widest possible variety of options for programs, services and residential facilities to assist in maintaining family relationships and easing their transition back into society.

The practical reality, however, of the relatively small number of women offenders presents limitations on the range of services that can be offered efficiently and cost-effectively. Nonetheless, the ministry is taking a number of steps to improve services in this area:

- Under agreement with the federal government, all female federal offenders are housed by the provincial government in the Burnaby Correctional Centre for Women (BCCW), so they can be closer to their families.

- Programs and services at BCCW, particularly in education and vocational programming, pre-release planning and aboriginal spirituality, have been significantly improved along the lines recommended by the report.
- The BCCW Open Living Unit allows children up to the age of two to remain in residence with their mothers.
- BCCW operates an on-site child care centre for children of staff members, with work placements for appropriate female offenders.
- The use of electronic monitoring as an alternative to incarceration is a major initiative of the Corrections Branch.

On a broader level, however, the government recognizes that much female crime is shaped by its social context. The government accepts the report's contention that the ultimate solution in many instances lies in social change and social service supports rather than criminal sanctions. The government, therefore, believes that its initiatives to address women's poverty and issues of violence against women may, in the long run, provide the best response to many aspects of female crime.

(7) Employment, Human Rights and Immigration

The report identifies various human rights and pay and employment equity initiatives that would help establish a fairer living and working environment for women.

The Government of British Columbia is clearly in support of these concepts, as evidenced by the pay equity and employment programs in the public service now.

Recent amendments to the *Human Rights Act*, permitting the filing of group and class action complaints and the ordering of employment equity as a remedy, have increased the Human Rights Council's authority to investigate and remedy cases of systemic discrimination. Also, amendments prohibiting discrimination on the basis of sexual orientation have extended protection to lesbians.

(8) Education

The report says education of the legal community and the general public about fairness and equality for women is needed to eliminate biases and inequities from the British Columbia justice system.

The government agrees. A number of initiatives are underway:

- Fairness and equality for women is an integral part of public legal education carried out by a variety of agencies. The issue is a priority of the Ministry of Attorney General in public legal education next year.

- The government supports the People's Law School and the Law Courts Education Society, both of which have extensive multicultural programs, providing information on law and the justice system in a variety of languages.
- The Ministry of Education will be updating the curriculum for Social Studies (Primary-Graduation) and has updated the units for Grade 12 Law.

In the long-term, however, the most important initiative in this area may be the Ministry of Attorney General's coordinated training strategy. The ministry will also coordinate the integration of training on fairness and equality for women with other partners in the B.C. justice system to make this training more consistent, efficient and effective.

Elements of the Report Directed to Other Justice System Partners

Many of the Law Society report's recommendations are outside the jurisdiction or direct control of the provincial government. These include proposed amendments to the *Criminal Code*, suggestions for change to federal immigration policy, proposals for action by the private Bar, and recommendations concerning police or judicial action and education.

Although it cannot initiate the changes proposed, the Government of British Columbia supports the intent of these recommendations and can perhaps influence or encourage change. The government, and specifically the Ministry of Attorney General, is aware of its responsibility to be a leader in promoting fairness and equality for women throughout the justice system. To an extent, it already plays such a role:

- The Ministries of Attorney General and Women's Equality are participating in federal-provincial committees that deal with many of the issues raised by the Law Society report.
- Cooperative working relationships with the RCMP and municipal police forces throughout the province have resulted in full police involvement in developing and implementing the policy on Violence against Women in Relationships.
- Coordinated training materials directed to justice system and victim services personnel have been developed for the policy on Violence against Women in Relationships.
- Recent provincial appointments to the judiciary reflect the principle of fairness and equality for women.

The Ministry of Attorney General has made fairness and equality for women a priority. Working with the Ministry of Women's Equality, it intends to be even more active.

The ministry will bring the issues of fairness and equality for women to the federal-provincial discussion table, and ensure that gender-related aspects of all justice issues are fully considered. The police, judiciary and community groups will be consulted to see how all justice system players can benefit from reconsideration of training programs and delivery mechanisms. The ministry's gender equality special advisor and advisory committee will support these and other efforts to ensure the justice system's pursuit of fairness and equality goals is consistent and coordinated.

Implementation

The government agrees with the report when it asks that continued attention be paid to issues of fairness and equality for women, and for systematic implementing and monitoring of the results.

The Ministry of Attorney General has made fairness and equality for women a priority. Branch heads are responsible for getting results. The gender equality special advisor will report directly to the Deputy Minister. The special advisor will encourage managers and coordinate their activities.

The gender equality advisory committee will assist the special advisor. The Ministry of Attorney General will update the advisory committee regularly. There will be a formal report to the committee each year.

Conclusion

The Government of British Columbia is committed to fairness and equality for women throughout society. It recognizes the leadership role the justice system has to play and is grateful to the Law Society of British Columbia for the energy and attention it has focused on this critical issue.

Despite the achievements of the recent past, the government realizes that much more remains to be done before all British Columbians will have confidence in the justice system's willingness and ability to treat them fairly. It is committed to action and will work with the Law Society and other community partners to make equality a reality in British Columbia.

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